

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
PETITION FOR  
REHEARING**



3-28

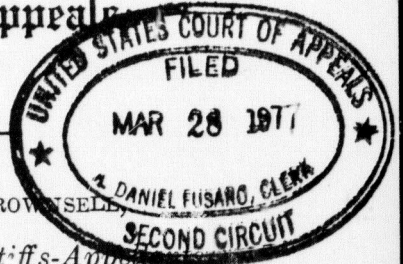
76-6104

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT



CHARLES BROWNSSELL and CAZILIE BROWNSSELL,

*Plaintiffs-Appellants*

—against—

ARCHIE DAVIDSON and JOAN BOYD,

*Defendants-Appellees.*

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**PETITION FOR REHEARING**

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RICHARD W. ROSEN

*Attorney for Plaintiffs-Appellants*

Office & P.O. Address

120 North Main Street

New City, New York 10956

(914) 634-4464

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# United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6104

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CHARLES BROWNSSELL and CAZILIE BROWNSSELL,

*Plaintiffs-Appellants,*

—against—

ARCHIE DAVIDSON and JOAN BOYD,

*Defendants-Appellees.*

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## PETITION FOR REHEARING

Appellants, pursuant to Rule 40 of the Federal Rules of Civil Procedure, respectfully petition this Court, before the panel thereof which considered the proceeding herein, for a rehearing, and show as follows:

1. The order and decree on appeal from the order of the United States District Court, Southern District of New York, was received by Appellants' counsel on or about January 31, 1977.

2. The order of the Court, recalling the mandate issued herein, is dated March 16, 1977.

3. That the order of the court below was based upon a holding that the National Labor Relations Act, as amended, and the jurisdiction of the National Labor Relations Board, taken together, constitute a pre-emption in such Act and in



such agency such as to oust the courts from entertaining the causes of action alleged in Appellants' complaint. The court cited as authority for its holding, *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959).

4. Since this Court gave no rationale for its order and decree on appeal affirming the court below, it is assumed that this Court also relied on the *San Diego* case. It is the desire of the Appellants to call to the attention of this Court the case of *Farmer v. United Brotherhood of Carpenters*, Docket No. 75-804, which is presently before the United States Supreme Court, having been argued on November 8, 1976. It appears to the Appellants that the *Farmer* case raises issues common to the instant appeal as to the pre-emption issue. The argument of the *Farmer* case before the United States Supreme Court was subsequent to the filing and submission of the brief on behalf of the Appellants, and was, therefore, not mentioned in such brief. To the best of the knowledge and belief of counsel for the Appellants, although research has been done, the United States Supreme Court has not yet issued its decision in the *Farmer* case. In addition, counsel for the Appellants understands that the United States Supreme Court has recently granted certiorari and will hear an appeal from the courts of the State of California relative to a picketing situation, the issue being pre-emption to oust the jurisdiction of the courts and that the *San Diego* case will be up for reconsideration. As noted, the *Farmer* case is likely to be dispositive of the issue of pre-emption raised in the instant matter. Moreover, in view of the expected decision of the United States Supreme Court in the case from California, wherein it is likely that the *San Diego* case will be directly reconsidered, further dispositive mat-

ter on the pre-emption issue can be looked forward to from that Court. This Court is being asked by the Appellants to grant a rehearing and to decide the appeal herein based upon the *Farmer* case, which should issue shortly, along with the case from California.

Dated: New City, New York  
March 21, 1977

RICHARD W. ROSEN  
*Attorney for Plaintiffs-Appellants*  
Office & P.O. Address  
120 North Main Street  
New City, New York 10956  
(914) 634-4464

To:

ROBERT B. FISKE, JR.  
United States Attorney  
*Attorney for Defendants-Appellees*  
Office and P.O. Address  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 791-1978

~~two~~ (2) Service of ~~three~~ (3) copies of the within <sup>PETITION</sup> <sub>for</sub> <sup>HEARING</sup>  
admitted this 28<sup>th</sup> day of MARCH 1977

Fredrick T. Davis  
By: Dr. Rotherberg, Secy